COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

v. **CASE NO. PUE980334**

SANVILLE UTILITIES CORP.,
Defendant

REPORT OF DEBORAH V. ELLENBERG, CHIEF HEARING EXAMINER

October 19, 1998

On July 8, 1998, the Staff of the State Corporation Commission filed a Motion Requesting Issuance of a Rule to Show Cause requiring Sanville Utilities Corporation ("Sanville" or "the Company") to show cause, if any there may be, why it should not be found in violation of § 56-265.13:4 of the Code of Virginia. Staff also requested that the Commission, pursuant to its authority under §§ 56-35 and 56-265.6 of the Code, revoke, alter, or amend the Company's certificate to provide sewer service unless the Company agrees to: (1) replace the entire section of sewer pipe along Saddle Ridge Road, (2) conduct a thorough study of the entire sewer system to determine what other portions of the system should be repaired and/or replaced, and (3) provide a voice mail or similar telephone answering system or service to ensure receipt of and response to inquiries from customers and regulators. The Staff further requested such other relief as the Commission finds necessary, just and reasonable to protect the public interest.

On July 13, 1998, the Commission, upon consideration of the allegations, issued a Rule to Show Cause against the Company directing it to appear on September 16, 1998, in the Commission's courtroom to show cause, if any there may be, why the Company should not be found in violation of § 56-265.13:4 of the Code. Sanville filed its response and requested that the hearing be cancelled. In support of its request, Sanville recites specific problems and disclaims responsibility. Sanville also claims that it lacks the funding to make the improvements sought by Staff. Finally, Sanville advised that the Public Service Authority of Henry County, Virginia ("PSA") is considering taking over the sewer system and treatment plant.

On September 9, 1998, the Company also filed a request for a continuance. Therein, Richard Anthony, president of Sanville, alleged that he had been summoned to appear in the General District Court in Martinsville on the same date that he had been directed to appear before the Commission. Mr. Anthony filed a copy of the summons. He further alleged that the Judgment Creditor's attorney in that case was out of town, and therefore he was unable to seek a continuance of that appearance.

Staff did not object to a continuance of a few days to avoid that conflict. Staff, however, did oppose Sanville's request to cancel the hearing.

By Ruling dated September 11, 1998, Sanville's request to cancel the hearing was denied, but its request for a short continuance to avoid Mr. Anthony's conflict with his appearance in the

General District Court in Martinsville was granted. The hearing was continued for six days, to September 22, 1998.

The hearing was convened on September 22, 1998, as scheduled. Mr. Anthony appeared pro se. M. Renae Carter, Esquire, and Don Mueller, Esquire, appeared on behalf of the Commission Staff. A transcript of the hearing is filed with this Report.

SUMMARY OF THE RECORD

Sanville is a Virginia public service corporation providing sewer service to approximately 162 customers in Henry County, Virginia. (Ex. GLA-2, at S-3). Sanville is authorized to provide such service pursuant to Certificate No. S-72. It has less than $1 million in gross annual revenues, and therefore is subject to the Small Water or Sewer Public Utility Act (§ 56-265.13:1 et seq.) ("SWSA").

Staff offered the testimony of Gregory L. Abbott, utilities specialist in the Commission's Division of Energy Regulation; Tim Baker, environmental health manager with the West Piedmont Health District, Virginia Department of Health ("VDH"); and Dr. James F. Smith, senior enforcement specialist with the Virginia Department of Environmental Quality ("DEQ"). Mr. Anthony testified in his own behalf.

Mr. Abbott testified that Staff began its investigation in June of 1998 in response to a customer complaint regarding the Company's sewerage service. Specifically, Mr. and Mrs. Alfred Cruise, customers of Sanville, complained that the Company's system has deteriorated to the point of being in a critical state of disrepair. (Ex. GLA-1). The Cruises complained that they had experienced raw sewage backing up into their home along Saddle Ridge Road, as well as standing in their yard. (Id.). In response to that complaint, Mr. Abbott conducted a site visit to the Company's facilities, and testified that the plant appeared to be poorly maintained and in need of repair. Mr. Abbott also inspected the area along Saddle Ridge Road that had experienced sewage overflow. While he was there, six residents voiced additional complaints with the system. (Tr. 11).

Mr. Abbott also discussed a recent problem which related to the sewerage lines serving the Rhodes family, also along Saddle Ridge Road. Specifically, on or about April 24, 1998, raw sewage leaked onto the ground on the Rhodes' premises. The problem was not cleared for two months. (Tr. 12). Mr. Abbott concluded that the Company had failed to provide "reasonably adequate sewer services." (Tr. 14).

Mr. Baker with the VDH testified that raw or partially treated sewage standing in yards or backing up into homes is a public health hazard. He also advised that such overflow incidents have been recurring problems with Sanville. He offered a summary of complaints received by VDH from November 1995 through June 1998. (Ex. TB-4). That list identified seventeen instances of sewage overflow or backup. (Id.).

Mr. Baker sponsored a complaint record of the incident reported in April 1998 which occurred at the home of Mr. and Mrs. Rhodes, 234 Saddle Ridge Road, Bassett, Virginia. The

record of complaint details the incident, and the attempts to contact Mr. Anthony to remedy the situation.

Mr. Baker also testified that VDH issued a notice of violation to Sanville dated May 6, 1998 related to the April 24, 1998 incident at the Rhodes' premises.[1] Specifically, the notice of violation ("VDH NOV") cited septic system effluent leaking onto the ground, and directed the Company to cease discharging untreated or partially treated sewage effluent to the ground surface immediately. In the VDH NOV, Sanville was advised that it could stop the discharge by clearing the sewer lines of obstructions. The Company was directed to make necessary repairs within five days of receipt of the letter.

On June 10, 1998, the VDH further advised Mr. Anthony by hand delivery that two unsuccessful attempts had been made to unclog the sewer line on Saddle Ridge Road to rectify the problem on the Rhodes' property. Moreover, the VDH advised that the neighboring properties were having problems due to those attempts and sewage was continuing to spill onto the ground. On June 18, 1998, the line was unstopped. (Ex. TB-6).

Staff also offered the testimony of Dr. James F. Smith with DEQ. Dr. Smith identified 995 DEQ violations of permit limits and statutes which occurred between April 1, 1992 and March 31, 1998. (Ex. JFS-8).

Dr. Smith also sponsored a July 11, 1998 DEQ notice of violation ("DEQ NOV") in which the DEQ advised Mr. Anthony that inspections conducted on March 31, and June 23, 1998 revealed improper operation and maintenance of the sewerage plant. The DEQ NOV notes that the March 31, 1998 inspection report finds that the facilities and equipment are in need of maintenance and lists compliance recommendations. The inspection report dated June 23, 1998, indicates that no measures have been taken to correct the dumping and maintenance problems. The DEQ NOV also notes that unchlorinated discharge into Blackberry Creek and sewage seeping through the ground on the Rhodes' property, is unauthorized, unreported, and continuing. Several other violations were also noted in the July 11, 1998 DEQ NOV. Those violations were not included in the 995 violations listed occurring between April 1, 1992 and March 31, 1998. (Ex. JFS-9; Tr. 50).

Finally, Dr. Smith testified that the PSA was considering acquiring the Sanville treatment plant and sewerage facilities. (Exs. JFS-8 and 11). Dr. Smith sponsored a Preliminary Engineering Report prepared for the PSA to facilitate its evaluation of the system. The report notes that the system has a history of DEQ noncompliance and was in poor condition. The report notes that nearly all of the sewer lines consist of a terra cotta material. The report notes that the terra cotta lines have had some blockage due to the intrusion of tree roots at some locations. The report recommends certain system improvements including the replacement of approximately 6400 linear feet of 8" sewer lines and the replacement of the existing treatment plant. (Ex. JFS-10, at 5). The report provides not only recommendations on replacements and repairs necessary but the estimated construction costs. (Id.). It concludes that before the PSA could accept ownership of the system, existing deficiencies would need to be corrected. Dr. Smith also sponsored an affidavit from Sidney A. Clower, County Administrator and General Manager of the PSA, who advised Mr. Anthony that

[1]The certified notice of violation was unclaimed and returned to the VDH. After three more attempts to deliver it, the notice of violation was hand-delivered to Sanville by a VDH representative on June 3, 1998. (Ex. TB-5).

the PSA would accept the sewer system as of January 1, 1999, but Mr. Anthony would be required to retain responsibility for all liens, debts, and encumbrances. (Ex. JFS-11).

Mr. Anthony testified in his own behalf. He observed that a number of the incidents, and notably the most recent incident in April of 1998 at the Rhodes' property, were not his fault. The Rhodes, he advised, had not paid their bill and he had allowed the progressive intrusion of tree roots to "disconnect" that service in accordance with his tariff. He reported that some of the other incidents were the results of vandalism. (Tr. 75). Mr. Anthony further testified that he could not afford the replacement urged by the Commission Staff. He added that he did not want to continue operating the system, but he could not afford to accept the conditions suggested by the PSA. (Tr. 78). Mr. Anthony testified that the liens, debts, and encumbrances which the PSA would require him to retain approached $100,000. (Tr. 82). Finally, Mr. Anthony asked the Commission what he should do and questioned the consequence of having his certificate revoked.

DISCUSSION

Section 56-265.13:4 of the SWSA requires "[a] small water or sewer utility. . . to furnish reasonably adequate services and facilities. . . ." Staff asserts that Sanville has failed to provide the required level of services and facilities. Staff recommends that Sanville be directed to replace the entire section of sewer pipe along Saddle Ridge Road, and to further study the entire system to determine what other portions should be repaired or replaced. Staff also recommended that the Company provide voice mail or a similar telephone answering system. Mr. Abbott testified that Mr. Anthony has complied with that recommendation and has now installed such an answering machine.

Mr. Anthony argued that many of the overflow incidents have been the result of vandalism. Mr. Anthony, however, admits that at least five incidents of overflow or backups were not a direct result of vandalism. (Tr. 75). The testimony of Mr. Baker and Dr. Smith document numerous deficiencies with the system.

With particular reference to the overflow incident on the Rhodes' premises, Mr. Anthony advised that it was his intention to more humanely allow the roots to gradually cut off service rather than abruptly disconnect service for nonpayment of bills. (Tr. 21-25, 74).

The Company's tariff includes a rule which addresses discontinuation of sewerage service. Rule 8 provides that:

> [S]ewerage service may be discontinued by the Company after five (5) days' written notice for any of the following reasons:
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> . . . .
>
> (5) for nonpayment of any account 30 days past due for water service, for sewerage service, or for any fee or charge accruing under these Rules and Regulations and the

> effective Schedule of Rates, except that the residential service of a customer shall not be terminated for non-payment of basic non-residential services.

Ex. GLA-3, at 6-7.

Thus, clearly Mr. Anthony does have the right to terminate service to a customer such as the Rhodes for nonpayment of their bill after due notice. However, termination of service should be clear and complete. It is neither appropriate nor "more humane" for the Company to simply allow tree roots to gradually terminate such service. The record herein, including Mr. Anthony's own testimony, clearly indicates that the system is deteriorating and therefore Sanville is not providing "reasonably adequate services and facilities" as required by Virginia Code § 56-265.13:4.

Mr. Abbott sponsored the 1996 Annual Report of Sanville for the year ending December 31, 1996. (Ex. GLA-2). Therein Sanville reported 162 sewerage customers. (Id. at S-3). The Company's tariff includes a flat rate of $23 per family. (Ex. GLA-3; Tr. 17). Mr. Abbott testified that if you multiply the flat sewer charge of $23 by 162 customers the Company should have received $44,712 of revenue from its sewer operations in 1996. In Mr. Abbott's opinion that level of revenues was sufficient to fund operation and maintenance expenses shown to be $33,877 in 1996, and begin the replacement program recommended by Staff. (Ex. GLA-2, S-3; Tr. 19). Mr. Anthony countered, however, that many of the customer premises are mobile homes or apartments and if they are not occupied, there is no customer to pay the sewerage bill. (Tr. 68). Mr. Anthony also advised that he could not financially make the modifications to the system required by Staff. (Tr. 78-80). Yet, many of the reported incidents of sewage overflow result in public health hazards and thus must be corrected.

In addition, on December 16, 1987, the Commission issued a final order on the *Petition of Residents of Westwood Acres, et al*. Therein, the Commission considered Sanville's rates for water and sewer service. While that case was pending, the Company sold a portion of its water system to the PSA. Although the Commission ultimately concluded that the rates were just and reasonable, it also adopted the Hearing Examiner's finding that Sanville should be directed to bring its system into compliance with the VDH and State Water Control Board regulations within two years of the final order. Moreover, Sanville was directed to file progress reports with the Division of Energy Regulation for two years at six-month intervals. Mr. Abbott testified that the Division never received such progress reports. (Tr. 20). Over ten years have elapsed, the reports have not been filed and the record in this case clearly indicates continuing VDH violations. Hence, the Company is in violation of the Commission's Final Order in Case No. PUE860070.

The record also supports the conclusion that the public interest would be well served if the PSA acquires the system and begins operation and service to the customers. The PSA is interested in acquiring the system. (Ex. JFS-11). Mr. Clower with the PSA attested that for more than a year, the PSA, DEQ, and Mr. Anthony have been involved in negotiations regarding the PSA's acquisition of the sewer system currently owned by Sanville and serving the Fair Way Acres Subdivision in Henry County, Virginia. Mr. Clower advised that:

> In recent discussions with DEQ held on September 15, 1998, I agreed to recommend to the PSA Board of Directors that the PSA acquire the above mentioned sewer system as of January 1, 1999, if Mr. Anthony agrees to the following conditions in accordance with the PSA's general policy:
>
> (a) Mr. Anthony must not demand any remuneration for the sewer system; and
>
> (b) Mr. Anthony must agree to take responsibility for all liens, debts and encumbrances placed upon the property of Sanville Utilities.

Id.

The PSA is financially able and anticipates making the repairs necessary to the existing system. (Tr. 60-64). Mr. Anthony is anxious to divest himself of the system and the responsibility for operating it. (Tr. 80). Staff and the DEQ support such a resolution. The DEQ in fact has worked to facilitate such an arrangement. (Tr. 52-53). Mr. Anthony, however, testified that those "liens, debts and encumbrances" for which the PSA wants Mr. Anthony to remain responsible total approximately $100,000. The terms and conditions outlined by the PSA thus will cost Mr. Anthony approximately $100,000. It therefore is unclear whether Mr. Anthony will transfer the system to the PSA.

The system must be repaired and properly maintained to assure that the operator, whether it is Mr. Anthony or the PSA, provides reasonably adequate service and facilities. If the PSA acquires the system and implements the more extensive replacement and repair program delineated in the Preliminary Engineering Report, it may be unnecessary for Mr. Anthony to make repairs, but the prospect of such an acquisition is not clear. Therefore, Sanville should be required to repair its system as recommended by Staff or provide proof that the PSA will take over the system imminently. Specifically, the Company should be directed to replace the entire section of sewer pipe along Saddle Ridge Road or submit an affidavit from the PSA that it will take over the system within six months of a final order in this case. Unless the PSA moves forward to acquire the system, the Company should also initiate a thorough study of the entire system to determine what other portion should be repaired and/or replaced. That study should be finalized and filed with the Commission within one year of the final order in this case.

Staff has recommended Sanville's certificate be amended or revoked if the Company fails to make the necessary repairs. The Code provides that the Commission may transfer, lease, or amend a certificate if it finds such action to be in the public interest after reasonable notice to the public and an opportunity to be heard as the Commission may prescribe. Virginia Code § 56-265.3 D. However, there is no evidence that notice was provided to the public that any change in the certificate was being considered.

Moreover, Virginia Code § 56-265.6 also provides that the Commission may "suspend, revoke, alter or amend" any certificate but not until "the holder thereof shall wilfully fail to comply, within a reasonable time to be fixed by the Commission," with the condition found to have been

violated. Here, Sanville has failed to provide adequate service and facilities on a portion of its system. That condition should be cured, and Sanville must be afforded an opportunity to repair its system.

Mr. Anthony sought guidance on the consequences of having his certificate revoked. Although I do not recommend such action at this time, Virginia Code § 56-265.3 provides that "[n]o public utility shall begin to furnish public utility service within the Commonwealth without first having obtained from the Commission a certificate of public convenience and necessity authorizing it to furnish such service." Hence, the Company would be in violation of the Code of Virginia if it continued to provide service without a certificate of public convenience and necessity and it would be subject to fines and penalties pursuant to Code § 56-265.6.

Finally, Virginia Code § 56-265.6 provides that the Commission may "after hearing, held after due notice to the holder of any such certificate and an opportunity to such holder to be heard, at which hearing it shall be proved that such holder has willfully. . . violated or refused to observe the laws of this State touching such certificate or any of the terms of the certificate, or any of the Commission's proper orders. . . impose a penalty not exceeding $1,000. . . ." The Company has continuing violations of its statutory responsibility to provide reasonably adequate service and facilities, and further, has violated a Commission order, therefore the Commission can, and I recommend that it, assess a penalty in the amount of $1,000, provided however that I recommend the penalty be suspended if the Company makes the required repairs or transfers the system to the PSA.

FINDINGS AND RECOMMENDATIONS

Upon consideration of the evidence received herein and the applicable law, I find:

1) That Sanville is a small certificated public service corporation providing sewer service to approximately 162 customers in Henry County, Virginia;

2) That Sanville is subject to the Small Water or Sewer Public Utility Act;

3) That Sanville is required to provide its customers with reasonably adequate services and facilities pursuant to the SWSA;

4) That the majority of Sanville's sewage collection system was installed in the 1970s and constructed of terra cotta material, which over time has fallen into disrepair because of vandalism, line breaks, and tree roots;

5) That Sanville's customers have experienced numerous overflows into their homes and into their yards which, on least one occasion was left uncorrected for two months;

6) That these sewage overflows have threatened the health of Sanville's customers;

7) That the Sanville sewage plant threatens the public health because raw sewage is discharged into Blackberry Creek during flood events, adversely affecting Virginia residents downstream;

8) That Sanville has received numerous notices of violations from the Virginia Department of Health for allowing untreated or partially treated sewage effluent to leak onto the ground;

9) That Sanville also has received numerous notices of violation from DEQ;

10) That the conditions of the Sanville sewer system and its effects on both customers and other members of the public represent a serious and continuous failure to provide reasonably adequate services and facilities in violation of § 56-265.13:4 of the Code;

11) That Sanville's failure to comply with all of the Virginia Department of Health and Virginia Department of Environmental Quality regulations constitutes failure to provide reasonably adequate services and facilities in violation of § 56-265.13:4;

12) That Sanville has not brought its system into compliance with the Virginia Department of Health regulations, has failed to file required reports, and thus violated the Commission's Final Order dated December 16, 1987, in Case No. PUE860070;

13) That Sanville should be directed to replace the entire section of sewer pipe along Saddle Ridge Road;

14) That Sanville should be directed to conduct a thorough study of the entire sewer system to determine what other portions of the system should be repaired and/or replaced;

15) That the Henry County Public Service Authority has offered to assume responsibility for the Sanville sewage system, and is presently in negotiations with Sanville; and

16) That if Sanville provides the Commission with proof of the imminent takeover of the system by the Henry County PSA, Sanville should be relieved of the obligations to replace portions of the system and conduct a study to evaluate other necessary repairs or replacements.

Accordingly, **I RECOMMEND**:

1) That Sanville be directed to replace the entire section of sewer pipe along Saddle Ridge Road within six months of the final order in this case;

2) That Sanville be directed to conduct a thorough study of the entire sewer system to determine what other portions of the system should be repaired and/or replaced and report the findings of that study to the Division of Energy Regulation within one year of the final order in this case;

3) That Sanville refrain from discontinuing service for nonpayment of bills by allowing tree roots to gradually terminate service;

4) That pursuant to Virginia Code § 56-265.6 the Commission impose fines and penalties on Sanville in the amount of $1,000 for violation of its statutory obligation to provide reasonably adequate services and facilities pursuant to § 56-265.13:4, and for violation of the Commission's Final Order dated December 16, 1987 in Case No. PUE860070.

I FURTHER RECOMMEND such obligations, fines and penalties, however, be forgiven if the requisite repairs are made to the system or proof that the system will be transferred to the PSA is filed within six months of the final order issued herein.

COMMENTS

The parties are advised that any comments (Section 12.1-31 of the Code of Virginia and Commission Rule 5:16(e)) to this Report must be filed with the Clerk of the Commission in writing, in an original and fifteen (15) copies, within fifteen (15) days from the date hereof. The mailing address to which any such filing must be sent is Document Control Center, P. O. Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a certificate to the foot of such document certifying that copies have been mailed or delivered to all other counsel of record and to any party not represented by counsel.

Respectfully submitted,

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Deborah V. Ellenberg
Chief Hearing Examiner